IN THE

SUPREME COURT OF THE UNITED STATES

No.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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IN THE

SUPREME COURT OF THE UNITED STATES

No. .....

M. M. MEREDITH, *Petitioner-Appellant,*

vs.

MARTIN D. VAN OOSTERHOUT,
Respondent-Appellee.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States.

OPINIONS BELOW.

On April 5th, 1960, the United States District Court for the Southern District of Iowa, Western Division dismissed petitioner's Complaint (Petition at Law) because same did not state a claim upon which relief could be granted. Said Complaint had asked that petitioner be granted a monetary judgment against respondent. (R. 35, R. 36),

On December 21, 1960, the United States Circuit Court for the Eighth Circuit affirmed the aforesaid holding; and

added that the reason for the same was that the allegations contained in said Complaint revealed that respondent would be entitled to the defense of "judicial immunity" against all charges therein made. Decree entered the same day. (Certified copy included herewith).

STAY OF MANDATE.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT.

January 4, 1961.

Re: No. 16528, M. M. Meredith vs. Martin D. Van Oosterhout.

Dear sirs: We have today entered an order in the above case staying issuance of mandate for 30 days and providing further that within that time there is filed with us a certificate of the Clerk of the Supreme Court of the United States that a petition for a writ of certiorari and record have been filed, the stay granted shall continue until the final disposition of the case by the Supreme Court.

Very truly yours,

Robert C. Tucker,
Clerk.

JURISDICTION.

Jurisdiction to review this case upon a Writ of Certiorari is conferred upon this Court by Section 1254 (1), Title 28, U.S.C.A.

QUESTIONS PRESENTED FOR REVIEW.

No. 1. Do the allegations in the Complaint reveal that respondent, while acting as a judge, knowingly exercised a usurped authority and therefore was not entitled to the defense of judicial immunity?

No. 2. Does the record reveal that this case was not within the jurisdiction of a federal court because it arose under the common law and there was no diversity of citizenship?

No. 3. Does the record reveal that the removal of this case from a state court to a federal court was an illegal act because under the conditions then prevailing said removal constituted a violation of the 5th Amendment to the Constitution? (R. 22.)

CITATION OF CONSTITUTIONAL PROVISIONS, STATUTES, ETC., QUOTED VERBATIM IN APPENDIX.

Subsections (a), (1) and (3) of Section 1442, Title 28, U.S. Code. (Page ..... of official Code. Verbatim Appx. A16)

Fifth Amendment to U. S. Constitution. (1939 Edition of Code of Iowa, page xiii. Verbatim Appx. A16-A17)

Paragraph One of Section 2 of Article III of U.S. Constitution. (1939 Edition of Code of Iowa, page xiii. Verbatim Appx. A17) Also Tenth Amendment to the Constitution.

Portion of the Opinion in *Bradley* v. *Fisher*, 13 Wallace 335. Field, J., 1871. (Page 352 of official Supreme Ct. Reports. Verbatim Appx. A18)

Section 1441 (b), Title 28, U.S.C. (Page ... of official Code. Verbatim Appx. A18)

Portion of the official records of the United States Court of Appeals for the Eighth Circuit. (Page 11 and following pages and pages 33 and 36 in certified copy of record of said court, said certified copy having been filed in the Supreme Court in connection with Application for Writ of Certiorari No. 16036, *Meredith* v. *John Deere Plow Co.*, referred to at 346 U.S. 898, Nov. 30, 1953. Verbatim Appx. A19)

STATEMENT OF FACTS.

Section 1442, Title 28, U.S.C.A. (Verbatim Appx. A16) authorizes federal courts to adjudicate cases of a certain type. Petitioner, an Iowan, commenced an action of this type in an Iowa state court. He asked that court to award him a monetary judgment against respondent, another Iowan, because respondent, while acting as a public official, had violated a duty imposed upon all public officials by the common law; and by said violation had inflicted injuries upon petitioner in Iowa. Petitioner alleged that respondent had failed to perform his official acts honestly and in good faith (R. 1, R. 2). Immediately afterwards, petitioner, in the form of a Motion, asked said Iowa state court not to permit this case to be removed to any federal court. One reason: If given the opportunity, petitioner could prove to said state court that he could not get a fair trial of this case in any federal court. (R. 22). Before said Motion had been adjudicated by said Iowa state court, and despite petitioner's protests (R. 31, R. 34) this case was removed to a federal district court. Both federal courts (district ct. and ct. of appeals) then held this case should be dismissed with prejudice because the allega-

tions contained in its Complaint revealed that respondent readily could defeat all charges therein contained by utilizing the defense of "judicial immunity." (R. 32, R. 35, and Opinion of Ct. of Appeals).

Here are some of those allegations which were contained in petitioner's said Complaint, to wit:

First: Respondent, while acting as judge of a federal court of appeals, officially required petitioner to disclose, involuntarily, that he intended to sue one, A, jointly with two Iowa citizens on the charge that all three of them, acting together, had violated the law of Iowa and by said violation had injured petitioner in Iowa. That he (petitioner) intended to bring said suit in some state court (R. 6, R. 7, R. 8).

Next: Respondent publicly and officially recommended that some federal district court should prevent petitioner from suing A at all on said charges. (R. 7):

Next: A certain federal district court ordered petitioner not to start any civil action, based on said charges against A, in any court either state or federal. (R. 8). Also not to report to any Iowa authorities the fact that he claimed to possess evidence to the effect that A had committed an Iowa felony in Iowa. (R. 10, R. 11, R. 12).

Said federal district court cited respondent's aforesaid recommendation as its authority for issuing said Order. (R. 8).

Finally: Respondent, while acting as judge of a federal court of appeals, affirmed the legality of said Order. (R. 11, R. 12).

ARGUMENT.

Concerning Question No. 1: Does a portion of the decision in *Bradley* v. *Fisher*, 13 Wallace 335 (Appx. A18), when combined with Section 1441(b), Title 28, U.S.C.A. (Sep. Appx. No. V), hold that when a federal judge officially orders an individual not to start some action in a state court—an action which is exclusively within the jurisdiction of state courts—that then said federal judge knowingly exercises a usurped authority; and, for that reason, is not entitled to utilize the defense of "judicial immunity" in a suit brought against him—a suit occasioned by said Order?

Concerning Question No. 2: If a duly elected or appointed public official inadvertently fails to take the oath of office, is he then free to perform his official acts dishonestly and in bad faith? When there is no diversity of citizenship, does any provision in paragraph One, Section 2, Article III of the Constitution (Appx. A17) empower federal courts to adjudicate cases arising under the common law?

Concerning question No. 3: Since the decision rendered by the federal courts in this case was adverse to petitioner, does it now appear that petitioner was deprived of his property without due process of law when, because said action was removed before the state court adjudicated his Motion, he lost the opportunity to have said Motion adjudicated by an impartial tribunal?

Additional Argument: The outcome of this case is a matter of vital importance to every retailer for, in the past, hundreds of retailers have suffered crushing loss—in some instances financial ruin—by being victimized with

the following swindle, to wit: A manufacturer contacts a retailer who operates a store in a territory where there is little or no commercial demand for the manufacturer's products. The manufacturer then makes an attractive proposal to this retailer—a proposal whereby this retailer will become the exclusive distributor of the manufacturer's products in this territory. The outstanding feature of this proposal, or offer, is this promise which the manufacturer therein makes to the retailer. This promise is that if or when the retailer accepts the manufacturer's said proposal or offer, then the business relationship between the two, thus created, will endure until the occurrence of one or other of the following three events, to wit: (1) Until the manufacturer abandons the attempt to have his products distributed in this territory. (2) Until the manufacturer establishes that the retailer has been guilty of grave fault in conducting the affairs of the retailer's said distributorship. (3) Until the retailer notifies the manufacturer that he no longer desires to retain said distributorship.

However, the manufacturer when he makes said promise to the retailer has no intention of honoring it. Instead, he intends to continue this business relationship only until he gets into a better bargaining position—into a bargaining position whereby he can enter into a similar business relationship with some second retailer in this territory but on terms more advantageous to himself. The manufacturer has high hopes of eventually attaining this better bargaining position because he knows that if the first retailer performs the duties of his distributorship loyally and with reasonable efficiency, the commercial demand for the manufacturer's products in this territory is bound to increase. If and when he does attain this better bargaining position, the manufacturer brazenly breaks the promise which he made to the first retailer—breaks the same by summarily severing all business relations with the first retailer. Then

the manufacturer proceeds to bargain with some second retailer in this same territory. Universally, courts hold that the first retailer—the disillusioned one—is without legal redress or remedy whatsoever for the loss which said severance almost invariably inflicts upon him. That he has no legal recourse on the ground of unjust enrichment, nor on the ground of breach of contract, nor on the ground of fraud. It is a widely held opinion that when judges make this ruling they thereby perform their official acts dishonestly and in bad faith. (Appx. A19)

CONCLUSION.

Wherefore, your petitioner prays that a Writ of Certiorari issue under Seal of this Court directed to the Court of Appeals for the Eighth Judicial Circuit commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of the said Court of Appeals had in the case on its docket No. 16,528, *M. M. Meredith, Appellant,* v. *Martin D. Van Oosterhout, Appellee,* to the end that this cause may be reviewed and determined by this Court as provided by the Statutes of the United States: and that the judgment therein of the said Court of Appeals for the Eighth Circuit be reversed by the Court and for such further relief as to this Court may seem proper.

Dated at Atlantic, Iowa, this 10th day of January, A.D. 1961.

M. M. MEREDITH,
301 West Sixth Street,
Atlantic, Iowa,
Petitioner.